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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,012	12/14/2001	Michael S.H. Chu	BSC-216 (1002/296)	7794
22852	7590	12/29/2005	EXAMINER	
		FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413	THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/017,012	CHU ET AL.	
	Examiner	Art Unit	
	Michael Thaler	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 October 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 and 20-28 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15 and 20-28 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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Claims 20 and 22-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zehnder (2,697,433). Zehnder discloses base (e.g. 10) defining an opening, outer rim (the rim around frame 10), guide platform (e.g. 46) disposed adjacent to the opening and rotatable about a rotation axis, the rotation axis extending through the opening and having a common point along the rotation axis, pivot 45 disposed substantially completely above the base 10, guide shaft 44 disposed at least partially within the pivot 45 (figure 4), the guide shaft 44 comprising radiopaque material (col. 3, lines 52-58). Alternatively, it would have been obvious that the upper surface of frame 10 which extends completely around the perimeter of the frame 10 is a rim. As to claim 22, Zehnder discloses guide rod (e.g. 56 or 57) connected to the pivot (at least indirectly). As to claim 23, Zehnder discloses guide rod lock (col. 3, lines 22-28). As to claim 25, Zehnder discloses shaft 53.

Claims 1-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zehnder (2,697,433) in view of Ray (3,457,922). Zehnder discloses the guide shaft 44 comprising radiopaque material (col. 3, lines 52-58) between a first end (the upper end as seen in figures 1 and 2) and a locus along the guide shaft normal to the longitudinal axis at the common point

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(the ring shaped locus of points which form the circumference of guide shaft 44 at the center of pivot 45), the radiopaque material extending to the locus. Zehnder fails to disclose a material which is less radiopaque located immediately adjacent the locus. However, Ray teaches that the pivot ball (13 or 18) of a stereotaxic probe guiding apparatus should be X-ray transparent plastic (col. 3, lines 12-14) apparently in order to obtain the advantages of better seeing the probe with X-rays as well as enabling the ball to be compressible (col. 3, lines 1-3) in order to be easily locked in place. It would have been obvious to make the pivot ball 45 of Zehnder of a material that is less radiopaque so that it too would have these advantages. With this modification, Zehnder would have a material which is less radiopaque located immediately adjacent the locus as claimed. As to claim 12, the Zehnder outer rim (the rim around frame 10) is inherently rotatable about the shaft axis prior to being fixed on the patient.

Applicant's arguments filed Oct. 27, 2005 have been fully considered but they are not persuasive. The upper surface of the base 10 of Zehnder is a rim in the same general sense that the narrow, upper, ring shaped surface of a cup is a rim. This rim of Zehnder is disposed substantially completely around a perimeter of the base 10 in the same general sense that the rim

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of a cup is disposed substantially completely around a perimeter of the cup.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht
12/22/05



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731